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STATE OF KANSAS

February 5, 2024

Testimony on SB365 (In-Person / Neutral)

Senate Committee on Federal and State Affairs

Tuesday, February 6, 2024

Chairman Thompson and members of the Committee:

Thank you for the opportunity to provide testimony on Senate Bill 365.

SB365 would remove the provision allowing advance mail ballots postmarked by 7:00 p.m. on Election Day and received by the county election office by the last postal delivery on the third day following the election to be counted. In 2017, responding to reports that the time to deliver first-class mail slowed from three business days to five or more, the Legislature added the 3-day grace period and moved the last day to request an advance mail ballot back from the Friday to the Tuesday before the election.

There are several arguments supporting elimination of the “3-day grace period.” First, it ensures that all ballots are in the possession of election staff at close of polls on election night and thus eliminates public concerns with ballots being transmitted after the election ends. Second, it seeks to modify voter behavior to ensure no voter, through no fault of their own, has their ballot voided if the ballot was properly mailed before election day but arrived in the 3-day period without a postmark. Mail ballots may be returned at remote ballot boxes or at any open polling place up to close of polls. Last, it reduces some administrative burden on election staff in the period between election day and county canvass,

The argument that votes continue to be counted after election day is less persuasive. There are multiple reasons the unofficial election night vote count and the final official vote count differ. About¹ 97% of all ballots are reported as unofficial results on election night; about 2.5% are provisional ballots added at the county canvass; about 0.25% are ballots received by election day but not counted until after election day; and about 0.25% are advance mail ballots received within the 3-day grace period.

The primary argument for maintaining the 3-day grace period is that since 2017 postal delivery has become slower. As a result, voters who, in good faith, mail their ballots in the week before the election may have their ballots invalidated by slow delivery.

The Committee may want to consider moving the mail-out date for advance mail ballots earlier in the process, but that would require closing the registration books earlier.

Last, voters concerned with timely mail delivery may use a remote ballot box or delivery to a polling place as a method of returning their advance mail ballot at any time up to 7:00 pm on election night. Should SB365 become law, we respectfully request that remote ballot boxes and polling place delivery remain available to all voters as a secure and accessible method to return their advance mail ballot.

¹ Data is based on a review of multiple elections. The percents for a particular office, county and election will vary.

Thank you for the opportunity to provide comments to the committee.

/Clayton Barker

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